

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

OYD COLLINS McCRAY,

Petitioner,

v.

CASE NO. 03-CV-73490-DT  
HONORABLE ARTHUR J. TARNOV

DOUGLAS VASBINDER,

Respondent.

**ORDER GRANTING PETITIONER'S**  
**MOTION FOR AN EVIDENTIARY HEARING**

Petitioner Oyd Collins McCray has applied for the writ of habeas corpus under 28 U.S.C. §§ 2241 and 2254. The habeas petition challenges Petitioner's 1994 state court convictions for first-degree murder and possession of a firearm during the commission of a felony. Respondent moved for summary judgment and dismissal of the habeas petition on the ground that it was barred from review by Petitioner's failure to comply with the one-year statute of limitations. Petitioner responded that the Court should equitably toll the statute of limitations because he was actually innocent of the murder.

On September 27, 2004, the Court denied the parties' motions without prejudice and ordered an evidentiary hearing on whether the statute of limitations should be tolled for Petitioner's claim of actual innocence. The evidentiary hearing was held on March 22, 2005.

The Court concluded in a subsequent opinion and order that, although the statute of limitations expired before Petitioner filed his habeas petition, he had made a colorable showing of actual innocence and was entitled to proceed with his claims. The Court then ordered

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Respondent to file an answer to Petitioner's claims. Respondent argued in his subsequent answer that Petitioner had failed to make an adequate showing of actual innocence and, therefore, the Court need not reach the merits of his claims.

As noted, the Court has already concluded that Petitioner made a colorable showing of actual innocence sufficient to equitably toll the statute of limitations. In addition, at least one of Petitioner's claims has arguable merit, relevant facts are in dispute, and the state courts did not conduct an evidentiary hearing. "Generally, a habeas petitioner is entitled to an evidentiary hearing in federal court if the petition 'alleges sufficient grounds for release, relevant facts are in dispute, and the state courts did not hold a full and fair evidentiary hearing.'" *Stanford v. Parker*, 266 F.3d 442, 459 (6th Cir. 2001) (quoting "*Wilson v. Kemna*, 12 F.3d 145, 146 (8th Cir.1994)).

Because Petitioner has met this standard, his motion for an evidentiary hearing is GRANTED.

The hearing will be held on **Monday, February 13, 2006 at 2:00 p.m.**

s/Arthur J. Tarnow  
Arthur J. Tarnow  
United States District Judge

Dated: December 13, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 13, 2005, by electronic and/or ordinary mail.

s/Catherine A. Pickles  
Judicial Secretary